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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,630	07/07/2003	Robert Lawrence Fair	EMCCOR P08AUSD1	7822

20210   7590   08/17/2009
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EXAMINER
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ART UNIT	PAPER NUMBER
2113	

MAIL DATE	DELIVERY MODE
08/17/2009	PAPER

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT LAWRENCE FAIR

Appeal 2009-001743
Application 10/614,630[1]
Technology Center 2100

Decided: August 17, 2009

Before JOHN C. MARTIN, JAY P. LUCAS, and THU A. DANG,
Administrative Patent Judges.

LUCAS, *Administrative Patent Judge.*

DECISION ON APPEAL

<div style="text-align:center">STATEMENT OF THE CASE</div>

Appellant appeals from a final rejection of claims 1 and 2 (all of the claims in this application) under authority of 35 U.S.C. § 134(a). The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

Appellant's invention relates to a shared system resource, such as a file server, communications server, or print server, shared among a number of users in a networked system, whereby the resource includes a plurality of hierarchically related and peer-related domains. (See Spec. 7, bottom and claim 1.) In the words of the Appellant:

> The shared system resource . . . comprises a plurality of domains . . . that are structured as an integrated cooperative cluster of domains including hierarchically related domains . . . and peer related domains . . . wherein each domain performs one or more functions supporting the services provided by the system resource.

(Brief 5, top to middle.)

Claim 1 is exemplary:

> 1.   A shared system resource for use in a networked system to provide services to a plurality of clients communicating with the system resource through a network, comprising:
>
> a plurality of domains structured as an integrated, cooperative cluster of domains including hierarchically related domains and peer related domains, each domain performing one or

more functions supporting the services provided by
the system resource, wherein

hierarchically related domains include a
higher level domain and a lower level domain
respectively performing higher and lower level
operations of one or more related functions
supporting the services provided by the system
resource,

peer related domains include parallel
domains performing related operations in mutual
support of one or more related functions
supporting the services provided by the system
resource, and

a domain having a peer related domain
monitors the peer related domain and assumes the
operations performed by the peer domain upon
detecting a failure in the peer related domain.

The prior art relied upon by the Examiner in rejecting the claims on
appeal is:

Lewis   US 5,768,501   Jun. 16, 1998

REJECTION

The Examiner rejects the claims as follows:

Claims 1 and 2 under 35 U.S.C. § 102(b) for being anticipated by
Lewis.

Appellant contends that the claimed subject matter is not anticipated
by Lewis because Appellant's claimed "peer related domains" and
"hierarchically related domains" are not taught. (See Brief 17, bottom.) The

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Examiner contends that both claims 1 and 2 are properly rejected. (See Ans. 11, middle.)

Rather than repeat the arguments of Appellant or the Examiner, we make reference to the Brief and the Answer for their respective details. Only those arguments actually made by Appellant have been considered in this opinion. Arguments that Appellant could have made but chose not to make in the Brief have not been considered and are deemed to be waived.

We reverse.

ISSUE

The issue is whether Appellant has shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 102(b). The issue turns on whether Lewis teaches the claimed "peer related domains" and "hierarchically related domains."

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

1. Appellant has invented a shared system resource that includes peer related and hierarchically related domains. (*See* Abstract.) "[E]ach domain performs or provides one or more related or functions integral to the functions or services supported by the resource." (Spec. ¶ [0034].)

2. Lewis teaches a plurality of equivalent network domains categorized by geographical location, the structure of the corporation (e.g., accounting, finance, human resources departments), or functional characteristics of

network resources. (*See* Fig. 3, Domains A, B, and C; col. 1, ll. 27-28, 34-35, and 48-49.)

PRINCIPLES OF LAW

Appellant has the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of prima facie obviousness or by rebutting the prima facie case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

Our reviewing court further states that "the words of a claim 'are generally given their ordinary and customary meaning.'" *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal citations omitted).

ANALYSIS

From our review of the administrative record, we find that the Examiner has presented the rejection of Appellant's claims under 35 U.S.C. § 102(b) on pages 3 to 4 of the Examiner's Answer. In opposition, Appellant presents the two arguments addressed below.

Appellant argues that the claimed peer related domains are not taught by the Lewis reference. (Brief 18, middle.) More specifically, Appellant contends: "Lewis '501 therefore does not teach or suggest peer domains wherein peer domains are parallel domains performing related operations in mutual support of one or more related functions supporting the services provided by the system resource and having a functional and operational

relationship such that a peer domain can monitor the functions and operation of a related peer domain." (Brief 17, top.)

The Examiner proposes that the Lewis reference teaches peer-related domains. (Ans. 3, middle.) According to the Examiner, the broadest reasonable interpretation of the claimed "peer related domains" includes Lewis's domains since each domain has equal standing with any other domain regardless of how the domain is categorized or characterized (*e.g.*, by geographical location, corporate function, or functional characteristics of network resources). (*See* Ans. 3, bottom and FF#2.) Since Lewis's domains are peers of one another, we find unconvincing Appellant's argument for the claimed "peer related domains." (*See* Fig. 3; col. 1, ll. 27-28, 34-35, and 48-49.)

Appellant also argues that the claimed "hierarchically related domains" are not taught by Lewis. (Brief 17, middle.) More specifically, Appellant argues: "Lewis '501 does not teach or suggest the existence of use of hierarchical domains because the only form of domains in the Lewis '501 system, that is, the network domains, are all at the same structural and functional level and thereby cannot be hierarchical to one another." (*Id.*)

We find that Lewis does have a teaching for hierarchical relationships, but only between network devices. (Col. 5, ll. 53-57.) Lewis teaches using a graphical interface that offers a "landscape view" of a network model for purposes of "monitoring the health and performance characteristics of" network components, such as cables, networks, and local area networks. (Col. 6, ll. 10-14.) The Examiner proposes in the Answer that a reasonable interpretation of a hierarchically related domain is "anything within the shared resource that has hierarchical components." (Ans. 5, bottom.) The

Examiner finds that Appellant made an admission that "a domain refers to
different elements in the system." (Ans. 7, middle.) Accordingly, the
Examiner finds that "servers, clients, routers, communication links are all
domains" and that these components of Lewis have hierarchical
relationships between them. (*Id.*)

We closely reviewed the arguments in the Brief and the Answer, as
well as the portions of Lewis the Examiner cited as teaching hierarchically
related domains, and indeed the entire Lewis reference. We disagree with
the Examiner's argument that "servers, clients, routers, communication links
are all domains." (Ans. 7, middle.) We give the claimed term
"hierarchical" its ordinary and customary meaning[2] (*See Phillips*, cited
above,) and find that Lewis's domains are in no sense graded or ranked in
accordance with the ordinary and customary meaning of hierarchical. We
find that Lewis's domains (A, B, and C) as shown in Figure 3 and described
in the reference are the only domains in Lewis and, in fact, are peer related
domains, in that the domains are counterparts within a network (*i.e.*,
Appellant's claimed shared resource system). (*See* FF#2.) Though the
Examiner finds that Lewis's network components are arranged in a
hierarchical manner within those domains (*see* Ans. 7, middle), the
Examiner's finding does not address the issue of a hierarchy of domains
themselves. Because the salient question is whether the *domains*
themselves are organized in a graded or ranked fashion, the Examiner's
finding of Lewis's teachings for higher level and lower levels of correlations

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[2] *See* dictionary entries for "hierarchy" and "hierarchical," *Webster's New
Collegiate Dictionary* 539 (1976).

of alarms within a domain (*i.e.*, intra-domain) or across domains (*i.e.*, inter-domain) is thus irrelevant.

We find that Lewis's domains are not even organized in a graded or ranked fashion. (*See* FF#2.) Moreover, Lewis's teachings for network structure do not meet Appellant's claim limitation for "hierarchically related domains" because network components, such as cables and routers, would not have been understood by a person of ordinary skill in the art to be the same as Appellant's claimed "hierarchically related domains." We find that Lewis teaches a network having a plurality of domains in which each domain exists at an equal level, such that no domain is a sub-domain of another domain. (*See* FF#2.) Appellant's claimed "hierarchically related domains" do not read on Lewis's teachings for the organization of components within a network structure or higher and lower levels of alarm correlations.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that the Examiner erred in rejecting claims 1 and 2.

DECISION

The Examiner's rejection of claims 1 and 2 is Reversed.

REVERSED

PEB

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